S.B.CRIMINAL MISC. PETITION NO.423/2007
(Sunil Prakash Purohit Vs. State of Raj.& Anr.)

Date of order : : 18.04.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.J.P.Chhangani, for the petitioner.
Mr.Ashok Upadhyay, PP for the State.
Mr.Swanand Jasmatiya, for the respondent No.2

Heard learned counsel for the parties.

The petitioner moved an application before the learned Judicial Magistrate No.7, Jodhpur to summon constable Sohan Lal as defence witness. It was stated that Sohan Lal was process server who has reported on the warrant that Sunil Prakash Purohit (the present petitioner) was not residing at 550 17/E CHB, Jodhpur and previously, he was living at 17 E/466 CHB.

Learned counsel for the petitioner states that notice under Section 138 of the Negotiable Instrument Act was sent to the petitioner at 550 17/E CHB, therefore, no such notice was served upon the petitioner. For this purpose, he wants to produce Sohan

lal as witness. But learned Magistrate without assigning any cogent reason has rejected the application of the petitioner vide its order dated 7.3.2007 which is bad in eye of law and is liable to be quashed.

Learned Public Prosecutor and learned counsel for the respondent have supported the order of learned Magistrate and states that notice was sent on the address 550 17/E CHB and after that, summon was also sent at 550 17/E which was served upon the petitioner on the same address. Thus, it is clear that report of process server has been manipulated. Therefore, learned Magistrate has rightly dismissed the application filed by the petitioner and it does not require any interference.

I have heard learned counsel for the parties and perused the order impugned. The matter was pending in the trial court for recording defence evidence. At that time, an application to call the witness Sohan Lal was filed by the petitioner. This application was dismissed by the learned trial court on 7.3.2007. In my opinion, accused has right to lead his evidence in defence and if accused files an application for summoning the witnesses,

the court should have to allow the said application and the witness should have been summoned in defence. The right of accused to lead evidence cannot be denied at the stage of defence. The evidenciary value of the witness can be considered at final stage after hearing both the parties. Accordingly, the order dtd.7.3.2007 passed by the Judicial Magistrate No.7, Jodhpur is set aside and learned trial court is directed to summon Sohan Lal as defence witness. However, it may be noted that if the defence witness does not appear after summons and warrants issued by the trial Court and if accused intentionally causes delay in the trial as well as producing the witness, the trial Court is at liberty to pass appropriate order in accordance with law.

With the aforesaid observations, the present misc. petition is disposed of.

(KRISHAN KUMAR ACHARYA), J.

NK